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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. [redacted] 47

RALPH D. PITTMAN,

Petitioner,

vs.

THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

RALPH D. PITTMAN,
Petitioner Pro Se.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 713

RALPH D. PITTMAN,

Petitioner

vs.

THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

The petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Claims in the above case.

Opinion Below

The opinion of the United States Court of Claims (R. 24-31) is reported at 116 F. Supp. 576.

Jurisdiction

The order of the United States Court of Claims dismissing petitioner's claim was entered on December 1, 1953 (R. 31). A motion for rehearing was filed on December 30, 1953 and was overruled on February 2, 1945 (R. 31-32). The jurisdiction of this Court is invoked under 28 U. S. C., Sec. 1255 (1).

Statement

The facts presented to the United States Court of Claims by petitioner (R. 1-23) and in no way contradicted by the United States by its motion to dismiss (R. 19), may be summarized as follows:

Petitioner is a member of the firm of Pittman and Roberts, with offices located in the District of Columbia, and is engaged in the practice of law (R. 1).

Petitioner was employed on December 1, 1946 by the West Side Iron Works as its attorney to prosecute a claim for relief under section 17(a) of the Contract Settlement Act of 1944, 58 Stat. 665, 41 U. S. C. (1946 Ed.) 117 (a) (R. 1). The terms of this employment were embodied in a letter dated March 11, 1949 from the managing partner of West Side Iron Works to petitioner (R. 3, 10-11). This letter read in part as follows:

> "For the services to be rendered by your firm the West Side Iron Works agrees to pay the following fee: (1) Pay to Pittman and Roberts a fee of fifteen per cent of the total amount recovered on this claim from the U. S. Maritime Commission. This portion of the fee shall be paid from proceeds recovered from the U. S. Maritime Commission . . ."

Petitioner took an active, personal part in the preparation and prosecution of West Side Iron Works' claim, and on June 29, 1950, the Appeal Board, Office of Contract Settlement, made an award to West Side Iron Works against the Maritime Administration in the amount of $321,614.93 (R. 2-3).

Subsequently, petitioner requested recognition and satisfaction of an attorney's charging lien in his favor against the award to West Side Iron Works on the ground that such a lien arose under the law of the District of Columbia but

such recognition and satisfaction was refused by the Appeal Board, Office of Contract Settlement (R. 3-5), by the Maritime Administration (R. 5), and by the Department of Justice (R. 5).

Under date of September 19, 1950, the Maritime Administration forwarded to West Side Iron Works a voucher in the amount of $321,614.93 and requested that one of the copartners sign it and return it to the Maritime Administration in order that the award to West Side Iron Works might be satisfied (R. 5-6). On advice of petitioner the managing partner of West Side Iron Works executed the voucher and forwarded it to petitioner, to be held by him pending the recognition and satisfaction of his attorney's charging lien (R. 6, 12A).

On or about February 23, 1951 Newell A. Clapp, Acting Assistant Attorney General, advised petitioner that he had directed the Maritime Administration to offset the entire amount of the award to West Side Iron Works against West Side Iron Works' renegotiation liabilities as of December 12, 1950, pursuant to the terms of an agreement entered into on February 19, 1951 between representatives of the Department of Justice and West Side Iron Works (R. 19-20, 21-22). This agreement, made without petitioner's knowledge or consent, provided that the United States would immediately lift a withholding order against other funds due West Side Iron Works in exchange for West Side Iron Works' consent to the offset (R. 19-20, 22-23).

Shortly thereafter the Maritime Administration offset the total amount of the award of $321,614.93 against the renegotiation liabilities of West Side Iron Works as of December 12, 1950 (R. 20). At the same time it lifted a withholding order against other funds due West Side Iron Works and has since paid these funds to West Side Iron Works in what petitioner characterizes as a deliberate attempt to deprive petitioner of his lien rights (R. 20).

The United States Court of Claims ordered petitioner's claim dismissed on motion of the United States on the sole ground that the fee agreement between petitioner and West Side Iron Works gave over to petitioner an interest in West Side Iron Works' claim against the Government in violation of the Anti-Assignment (R. 24-31).

Statutes Involved

The pertinent provisions of the Anti-Assignment Statute (R. S. 3477, 31 U. S. C. 1946 Ed. 203) are set forth in the Appendix, *infra*, p. 14.

Question Presented

Whether an otherwise valid attorney's charging lien arising under the law of the District of Columbia and based on an attorney's fee agreement which provided only that the attorney was to be paid a stipulated percentage out of the proceeds recovered on a claim against the United States is a nullity under the Anti-Assignment Statute, R. S. 3477.

Reasons for Granting the Writ

The decision of the United States Court of Claims that petitioner's lien is a nullity under the Anti-Assignment Statute is in basic conflict with the decision of the Court of Appeals for the District of Columbia in the case of *Wardman* v. *Leopold*, 85 F. 2d 277 (1936), cert. den. 299 U. S. 570 (1936), and the decision of the Court of Appeals, Second Circuit, in the case of *Malman* v. *United States*, 202 F. 2d 483 (1953), rehearing den. 207 F. 2d 897 (1953). Certiorari should be granted to resolve these conflicts and thereby secure greater uniformity in the interpretation and application of the Anti-Assignment Statute by the Federal courts.

The specific question presented here is one which has not

been settled by this Court but should be because of its vital importance, not only to petitioner but to the large number of persons with claims against the United States and the attorneys who represent them. Congress has removed many long-standing bars to the bringing of suits against the United States, but only when the law is settled concerning the applicability of the Anti-Assignment Statute to attorneys' charging liens upon awards and judgments granted against the United States will persons with claims against the United States be able to most effectively secure competent legal counsel in the vindication of their rights.

BRIEF IN SUPPORT OF PETITION

Specification of Errors to Be Urged

The United States Court of Claims erred:

1. In holding that the fee contract between petitioner and his client assigned to petitioner an interest in the client's claim against the Government.

2. In holding that the case at bar is controlled by the decision of this Court in *Nutt* v. *Knut,* 200 U. S. 12.

3. In holding that the attorney's charging lien asserted by petitioner is a nullity under the provisions of the Anti-Assignment Statute.

Summary of Argument

Petitioner's fee contract by its terms gave him no interest in or lien upon West Side Iron Works' claim against the United States. Petitioner's lien arose by operation of the law of the District of Columbia. Thus, even if an attorney's charging lien is considered to be in the nature of an assignment, petitioner's lien is not invalid under the Anti-Assignment statute since it is well settled that assignments by operation of law are outside the prohibitions of that statute.

ARGUMENT

At the very outset in its opinion below, the Court of Claims held that petitioner's fee contract gave over to him an interest in his client's claim against the United States. Proceeding from there, the Court relied exclusively on the decision of this Court in the case of *Nutt* v. *Knut,* 200 U. S. 12 (1906), and held, in effect, that petitioner's otherwise valid attorney's charging lien was a nullity under the provisions of the Anti-Assignment statute. In so holding, it is submitted, the Court of Claims erred.

Point I

Petitioner's fee agreement by itself effected no assignment or transfer of any part of West Side Iron Works' claim against the Government.

The exact meaning and effect of petitioner's fee agreement are of such vital importance to what petitioner believes to be the correct determination of this case that the Court's attention is called to the following language in that agreement (R. 10-11):

> "For the services to be rendered by your firm the West Side Iron Works agrees to pay the following fee:
>
> (1) Pay to Pittman and Roberts a fee of fifteen per cent of the total amount recovered on this claim from the U. S. Maritime Commission. This portion of the fee shall be paid from proceeds recovered from the U. S. Maritime Commission . . ."

It was this part of the fee contract which the Court of Claims held transferred or assigned to petitioner an interest in his client's claim in violation of the Anti-Assignment statute. Yet nowhere in the above-quoted language is there mention of a transfer or assignment of any claim. West Side Iron Works simply promised to pay to petitioner a stipulated percentage out of any recovery on its claim against the Government.

It is true that in the District of Columbia it has long been the law that where prior to the successful prosecution of a claim an attorney and his client have entered into an agreement under the terms of which the attorney is to be paid a stipulated percentage out of any recovery, the attorney may assert a charging lien against the proceeds of the claim. *Pink* v. *Farrington,* 92 F. 2d 465 (App. D. C. 1937), cert. den. 302 U. S. 741 (1937); *Hutchinson* v. *Worthington,* 7 App. D. C. 548 (1896). See also *Ingersoll* v. *Coram,* 211

U. S. 335 (1908); *Barnes* v. *Alexander*, 232 U. S. 117 (1914). But simply because petitioner's fee contract met the requirements for the establishment of a charging lien in the District of Columbia, it does not follow—as held by the Court below—that the contract itself thereby gave over or assigned to petitioner an interest in his client's claim against the Government. In fact, the holding of the United States Court of Claims to that effect conflicts squarely with the decision of the Court of Appeals for the District of Columbia in *Wardman* v. *Leopold*, 85 F. 2d 277 (App. D. C. 1936) cert. den. 299 U. S. 570 (1936).

Wardman v. *Leopold* involved a fee contract which provided that certain tax specialists were to receive 33⅓ per cent of the amount recovered from the Government on a tax claim. Subsequent to the allowance of the claim, the tax specialists brought an action against their client to establish a lien against the sum due him. The Court of Appeals specifically rejected the argument that the lien claimed by the plaintiffs was void under the Anti- Assignment statute and held a valid lien to exist. Referring to the fee contract before it, the Court said:

> "There was no assignment here of any claim against the government. The contract merely looked to the future, toward a possible recovery, and provided for payment of plaintiffs' fees out of the sum to be recovered. There is a sharp distinction, which the courts recognize, between a void attempt to assign a claim pending against the government and an attempt to impress upon a fund an equitable lien for a fee to be paid under contract from the amount recovered. Until there had been an award to Wardman, no interest in the fund in question accrued in favor of plaintiffs, since no part of the claim against the government had been assigned to them. But when the amount to be paid had been ascertained, and all that remained to be done was the delivery of a draft to Wardman for the money

found to be due, then plaintiffs' lien attached and became enforceable in an equity proceeding against the fund, which still remained in the hands of the government." (85 F. 2d at p. 281).

The fee agreement in *Wardman* v. *Leopold* was essentially the same as petitioner's. Each provided that a stipulated percentage of the total amount recovered was to be paid for the prosecution of a claim against the Government. Since it was held in the Wardman case that no assignment occurred by virtue of the fee agreement there, it is submitted that on the same basis no assignment occurred by virtue of petitioner's fee agreement.

Point II

The decision in Nutt v. Knut, 200 U.S. 12, does not control the present case.

Having erroneously held that petitioner's fee contract transferred or assigned to him an interest in his client's claim, the United States Court of Claims compounded its error by holding that the present case was controlled by the decision of this Court in *Nutt* v. *Knut*, 200 U. S. 12 (1906). The facts in the two cases differ materially.

Nutt v. *Knut* involved an agreement whereby an attorney was retained to handle the prosecution of a claim against the Government. The attorney's compensation was provided for as follows:

> ". . . the party of the second part agrees to pay the party of the first part a sum equal to 33⅓ per cent of the amount which may be allowed on said claim, *the payment of which is hereby made a lien upon said claim and upon any draft, money or evidence of indebtedness which may be issued thereon.*" (200 U. S. at 13. Emphasis supplied.)

Subsequent to an allowance of the claim, the attorney sued to recover an unpaid balance of the fee promised.

Applying the Anti-Assignment statute to the fee contract, this Court said (pp. 20-21):

> "If regard be had to the words as well as to the meaning of the statute, as declared in former cases, it would seem clear that the contract in question was, in some important particulars, null and void upon its face. *We have in mind the clause making the payment of the attorney's compensation a lien upon the claim asserted against the government,* and upon any draft, money or evidence of indebtedness issued thereon. In giving that lein from the outset, before the allowance of the claim, and before any services had been rendered by the attorney, *the contract,* in effect, gave him an interest or share in the claim itself and in any evidence of indebtedness issued by the government on account of it. In effect or by its operation it transferred or assigned to the attorney, in advance of the allowance of the claim, such an interest as would secure the payment of the fee stipulated to be paid. All this was contrary to the statute; for its obvious purpose, in part, was to forbid anyone who was a stranger to the original transaction to come between the claimant and the government, prior to the allowance of a claim, and who, in asserting his own interest or share in the claim, pending its examination, might embarrass the conduct of the business on the part of the officers of the government. We are of the opinion that the state court erred in holding the contract on its face, to be consistent with the statute." (Emphasis supplied)

Clearly the above holding in the *Nutt* case was based on the fact that the fee contract there, *by its very terms,* provided for a lien upon the client's claim against the Government. The provision explicitly giving a lien upon the claim was held to be tantamount to a written assignment which if valid would have permitted the attorney himself to bring action upon the claim prior to judgment for his client.

In sharp contrast to the fee agreement in the *Nutt* case,

petitioner's fee contract by its terms in no way gave him a lien upon or any right in West Side Iron Works' claim prior to judgment. Because of this vital factual difference the decision in *Nutt* v. *Knut* is not applicable here.

Point III

Any Assignment occurring in the establishment or enforcement of petitioner's lien was by operation of law, hence not in violation of the Anti-Assignment Statute.

The lien asserted below arose by operation of the law prevailing in the District of Columbia relating to attorneys' charging liens. *Wardman* v. *Leopold,* 85 F. 2d. 277 (App. D. C. 1936), cert. den. 299 U. S. 570 (1936); *Houston* v. *Ormes,* 252 U. S. 469 (1920). See also *Malman* v. *United States,* 202 F. 2d. 483 (2d. Cir. 1953). It was that rule of law, as it applied to the fee agreement between petitioner and his client, which gave petitioner his lien. Without that rule of law petitioner would have no lien since his fee agreement by its terms in no way provided for one.

Because petitioner's lien arose by operation of law, whatever assignment is considered to have occurred in that process likewise must have taken place by operation of law. *Malman* v. *United States, supra; Brooks* v. *Mandel-Witte Co.,* 54 F. 2d. 922 (2d. Cir. 1932), cert. den. 286 U. S. 559 (1932); *Houston* v. *Ormes,* 252 U. S. 469, 473 (1920). See also *Prairie State National Bank* v. *United States,* 164 U. S. 227 (1896); *Morgenthau et al.* v. *Fidelity & Deposit Co. of Maryland,* 94 F. 2d. 632 (App. D. C. 1937). But it is well settled that assignments by operation of law are not in violation of the Anti-Assignment statute. *United States* v. *Aetna Casualty & Surety Co.,* 338 U. S. 366 (1949); *United States* v. *Shannon,* 342 U. S. 288 (1952). From this it follows that petitioner's lien is not invalidated by that statute.

In *Houston* v. *Ormes, supra,* suit was brought in the Dis-

trict of Columbia to establish an equitable lien for an attorney's fees upon a fund in the United States Treasury appropriated by Congress to pay a claim found due by the United States Court of Claims. The Supreme Court of the District of Columbia rendered judgment in favor of the plaintiff and granted an injunction against the secretary of the Treasury and the Treasurer of the United States, restraining the paying out of the fund except to a receiver appointed by the Court. On appeal, this Court said with reference to the proceedings in the lower court (pp. 473-474):

> "Sec. 3477, Rev. Stat. (Comp. Stat. § 6383, 2 Fed. Stat. Anno. 2d. ed. p. 179), regulating the assignment of claims against the United States, is not an obstacle. As has been held many times, the object of Congress in this legislation was to protect the government, not the claimant; and it does not stand in the way of giving effect to an assignment by operation of law after the claim has been allowed."

Apparently this Court looked upon whatever assignment occurs during the process of establishing and enforcing an attorney's charging lien in the District of Columbia as an assignment "by operation of law".

The same conclusion seems to have been reached by the Court of Appeals, Second Circuit, in the recent case of *Malman* v. *United States*, 202 F. 2d. 483 (2d. Cir. 1953). There an attorney had a fee contract whereby he was to receive 35 per cent of the amount recovered on a claim against the Government. Following an administrative settlement of the claim, the attorney asserted a lien on the fund due his client. The Court held that the attorney had a lien under the law of New York and that the lien was in the nature of an assignment by operation of law to which the Anti-Assignment statute did not apply. Significantly, the

Court cited as its sole authority for this latter proposition the District of Columbia case of *Wardman* v. *Leopold,* indicating thereby its conclusion that any assignment occurring during the establishment of a charging lien in the District of Columbia is by operation of law and not in violation of the statute.

It is submitted that the decision below is in basic conflict with the holding of the Court of Appeals in *Malman* v. *United States,* supra. It is true that the State of New York has an attorney's lien statute which applied in the *Malman* case, while there is no such statute in effect in the District of Columbia, but the rule of law under which petitioner's lien arose has been clearly enunciated and consistently applied by the Court of Appeals for the District and is just as much the law here as the New York statute is the law in New York. A lien arising under the law of the District of Columbia is no less created "by operation of law" than is one arising under a State Statute, since in each case it is the prevailing local law which gives birth to the lien. If the Anti-Assignment Statute does not apply to a lien arising under New York law, surely for the same reason it does not apply to one arising under the law of the District of Columbia.

Conclusion

Since the question presented is of general importance and since the decision below conflicts in several respects with the decisions of two Courts of Appeals, petitioner submits that this Court should grant the writ of certiorari.

Respectfully submitted,

RALPH D. PITTMAN,
Petitioner Pro Se.

PITTMAN & ROBERTS,
Of Counsel.

APPENDIX

A Copy of the Pertinent Section of the Anti-Assignment Statute

Sec. 3477. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same. * * *

(31 U. S. C. 1946 ed., Sec. 203.)

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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 47

RALPH D. PITTMAN, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Claims (R. 24-31) is reported at 116 F. Supp. 576.

JURISDICTION

The order of the Court of Claims dismissing petitioner's claim was entered on December 1, 1953 (R. 31). A motion for rehearing was filed on December 30, 1953, and was overruled on February 2, 1954 (R. 31-32). The petition for a writ of cer-

tiorari was filed on April 23, 1954. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether an attorney, who has a charging lien allegedly arising under the law of the District of Columbia and based on an attorney's fee agreement which provided that the attorney was to be paid a stipulated percentage of the proceeds recovered on a claim against the United States, can obtain the amount of his lien by suit against the United States in the Court of Claims, where the Government has previously set off the client's entire recovery against pre-existing and unpaid obligations of the client.

STATUTES INVOLVED

The pertinent provisions of the Anti-Assignment Statute (R. S. § 3477, 31 U.S.C. 203), and the Set-Off Act (18 Stat. 481, as amended, 31 U.S.C. 227) are set forth in the Appendix, *infra*, pp. 10-11.

STATEMENT

On June 29, 1950, the Appeal Board, Office of Contract Settlement, made an award, in the amount of $321,614.93, to West Side Iron Works on the company's claim against the Maritime Administration under Section 17 (a) of the Contract Settlement Act of 1944 [1] (R. 24-25). Petitioner was an attorney employed by the company to assist in the

[1] 41 U.S.C. 117(a). Section 17 (a) provides for settlement of informal, defective, and quasi-contractual agreements with World War II contracting agencies.

prosecution of the claim under an agreement whereby a fee of 15 percent of the total amount recovered was to be paid to him "* * * from proceeds recovered from the U.S. Maritime Commission * * *". Petitioner unsuccessfully asserted a right to direct recognition and satisfaction of this fee agreement by the Government and thereafter obtained and held the voucher which had been forwarded to the company for execution pursuant to the award (R. 25-26).

The company was subject to an outstanding renegotiation liability, a schedule of which was forwarded to the Department of Justice by the Maritime Administration on December 12, 1950 (R. 18). Thereafter, the Maritime Administration was directed to offset the entire amount of the award against the company's renegotiation liability, pursuant to an independent agreement of February 19, 1951, between the company and the Department of Justice which provided that the United States would immediately lift a withholding order against other funds due to West Side Iron Works in exchange for the latter's consent to the offset (R. 26). This agreement was carried out (R. 26).

Petitioner thereupon brought this action in the Court of Claims to enforce his alleged attorney's lien (R. 1-19). The United States moved to dismiss the petition on the following grounds (R. 19, 23, 26-7): (1) that there is no Federal statute under which attorney's lien may be recognized; (2) that federal funds are not subject to local lien laws; (3) that the lien asserted is a nullity under the provi-

sions of the Anti-Assignment Act; and (4) that, in any event, the Court of Claims is without jurisdiction to enforce an attorney's lien in an independent proceeding against the United States because of lack of privity of contract between plaintiff and defendant and because an attorney's lien can only be enforced by an equity proceeding, which is beyond the jurisdiction of the Court of Claims.

The Court of Claims dismissed the complaint on the ground that the lien here asserted violates the provisions of the Anti-Assignment Statute (R. 24), thus finding it unnecessary to consider the other points raised by the Government (R. 31).

ARGUMENT

The federal anti-assignment and offset legislation constitute part of an integrated body of legislation intended to protect the United States in managing claims made by and against the Government. These statutes, as implemented by judicial decisions, require that petitioner's claim be denied.

1. The restrictions of the Anti-Assignment Statute on assignments of claims agains the Government are intended to save to the United States defenses against an assignor which might not be applicable to an assignee, to prevent possible multiple payments of claims, to preclude persons from peddling or speculating in such claims, to avoid the necessity of investigating numerous alleged assignments, and to enable the Government to deal only with the original claimant. *United States* v. *Shannon*, 342 U.S. 288, 291-293; *United States* v. *Aetna*

Surety Co., 338 U.S. 366, 371.[2] Protection to the Government is the predominant and controlling consideration.

This Court's decision in *Nutt* v. *Knut*, 200 U.S. 12, presents a clear application of these principles to the type of situation here involved. Relied upon by the court below, this case is dispositive of petitioner's claim. It held that an agreement to pay an attorney one-third of the amount recovered in prosecuting a claim against the Government, "the payment of which is hereby made a lien upon such claim * * *" (200 U. S. at 13), could not give the attorney any interest or share in the claim itself. The attempt to do so, said the Court, "was contrary to the [Anti-Assignment] statute; for its obvious purpose, in part, was to forbid anyone who was a stranger to the original transaction to come between the claimant and the Government, prior to the allowance of a claim, and who, in asserting his own interest or share in the claim, pending its examination, might embarrass the conduct of the business on the part of the officers of the Government" (200 U. S., at 20). The attorney recovered his fee from the client, however, for the Court found that as between the parties the promise to pay the fee could stand alone, apart from the invalid lien.

As the court below noted, "This case stands for the broad principle that any attempt to impress a lien upon the proceeds of a claim against the United States as security for the payment of an attorney's

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[2] Established exceptions to the statute are not involved in this case.

fee is within the ends to which the prohibition of the [Anti-Assignment statute] was aimed" (R. 30).

2. The Set-Off Act is equally potent in protective purpose and effect. It embodies, as Judge Learned Hand said, "the general policy * * * that claims against the United States are always to be subject to set-off." *Ozanic* v. *United States,* 188 F. 2d 228, 231 (C.A. 2). And, as this Court has often asserted, the Government has the same right which belongs to every creditor "to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due to him." *United States* v. *Munsey Trust Co.,* 332 U.S. 234, 239; *McKnight* v. *United States,* 98 U.S. 179, 186; *Gratiot* v. *United States,* 15 Pet. 336, 370.

That this statute protects the Government from claims such as that petitioner presses here, was recognized by the Court of Appeals for the Second Circuit in *Malman* v. *United States,* 202 F. 2d 483 (C.A. 2), rehearing denied, 207 F. 2d 897. That case involved a fee agreement similar to the one now before the Court, and an attempt by the attorney, under the New York attorney's lien statute, to assert a lien on funds recovered by his client but offset by the Government against the client's outstanding tax obligations. The court, although asserting in a footnote that the Anti-Assignment Statute was not applicable to such a lien, went on to find the claim unenforceable because the right of set off had accrued to the Government before the signing of the agreement between attorney and client, thus leaving nothing to which a lien could

attach. When, on petition for rehearing, the attention of the court was directed to certain New York decisions alleged to rank lawyer's liens ahead of the normal private right of set off, the court denied the petition on the ground that, even if this were the New York law with regard to "ordinary persons," and even if such New York law involved "substantive rights" which would be applied by federal courts, nevertheless those decisions would not apply to claims against the Government, since the consent to suit of the Tucker Act, 24 Stat. 505 and amendments, 28 U.S.C. 1346, is coupled with the Government's right of set off and counterclaim (207 F. 2d 897-898).

3. In the light of the foregoing discussion, petitioner's claim of a conflict among lower court decisions on the issue now before the Court is without substance. The case upon which petitioner primarily relies, in his assertion of a conflict, is *Wardman* v. *Leopold,* 85 F. 2d 277 (C.A.D.C.), certiorari denied, 299 U.S. 570, involving a fee agreement, similar to that in the case at bar, which provided that certain tax specialists were to receive ⅓ of the total amount of tax refunds secured for their client. The Court of Appeals for the District of Columbia held that an action by the tax specialists to recover their fees *from the client* was not barred by the Anti-Assignment Statute. But the decision makes a clear distinction between the case before it, dealing with the rights of the parties to the fee agreement *inter se,* and a situation in which the lien is asserted against the Government. See

85 F. 2d at 281.[3] The court quotes its own earlier observation to this effect, in *Sanborn* v. *Maxwell,* 18 App. D.C. 245, 253, where it cited Mr. Justice Harlan's statement that, "As this court has said, the object of Congress by section 3477 was to protect the Government, and not the claimant, and to prevent frauds upon the Treasury." *Price* v. *Forrest,* 173 U.S. 410, 423. This same distinction is sharply pointed up by the other case which petitioner claims as conflicting with the decision below, *Malman* v. *United States, supra,* pp. 6-7. For it is also clear from the discussion above that the *Malman* decision directly supports the Government's position that an attorney cannot assert a lien on funds which the United States has set off against obligations owed to it by the attorney's clients. In short, there is no dispute among the cases that an attempt to assert an attorney's lien against the United States must fail in a situation, like this, where the United States has offset the recovered sum against other obligations of the client. There is no decision to the contrary The only possible disagreement is whether the statutory prohibitions apply as well to the rights *inter se* of the parties, and this is not the issue here where the claim is against the United States.

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[3] There is, therefore, no need to consider whether the rationale of the *Wardman* case conflicts with that of this Court in *Nutt* v. *Knut,* 200 U.S. 12 (discussed above, pp. 5-6), with respect to the attorney's rights against his client. The *Nutt* case was not mentioned in the *Wardman* opinion.

CONCLUSION

For the foregoing reasons, it is submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

The pertinent provisions of the Anti-Assignment Statute, R.S. § 3477, 35 Stat. 411, as amended, 31 U.S.C. § 203, read as follows:

> § 203. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at last two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same. * * *

The pertinent provisions of the Set-Off Act 18 Stat. 481, as amended 47 Stat. 1516, 31 U.S.C. § 227, read as follows:

§ 227. When any final judgment recovered against the United States duly allowed by legal authority shall be presented to the Comptroller General of the United States for payment, and the plaintiff therein shall be indebted to the United States in any manner, whether as principal or surety, it shall be the duty of the Comptroller General of the United States to withhold payment of an amount of such judgment equal to the debt thus due to the United States; and if such plaintiff assents to such set-off, and discharges his judgment or an amount thereof equal to said debt, the comptroller General of the United States shall execute a discharge of the debt due from the plaintiff to the United States. But if such plaintiff denies his indebtedness to the United States, or refuses to consent to the set-off, then the Comptroller General of the United States shall withhold payment of such further amount of such judgment as in his opinion will be sufficient to cover all legal charges and costs in prosecuting the debt of the United States to final judgment. And if such debt is not already in suit, it shall be the duty of the Comptroller General of the United States to cause legal proceedings to be immediately commenced to enforce the same, and to cause the same to be prosecuted to final judgment with all reasonable dispatch. * * *

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